

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

H.C., AN INFANT AND MINOR BY AND
THROUGH HIS PARENTS AND NEXT
FRIENDS C.C. AND M.C., C.C.,
INDIVIDUALLY, AND M.C.
INDIVIDUALLY,

Plaintiffs,

v.

Case No. 4:20-cv-00153

MATHEWS COUNTY SCHOOL BOARD,
NANCY WELCH, LAUREL BYRD, APRIL
EDWARDS, DENISE MCCUISTION, AND
GABRIELLE "GABBY" CROWDER,

Defendants.

**DEFENDANTS MATHEWS COUNTY SCHOOL BOARD,
NANCY WELCH, LAUREL BYRD, AND DENISE MCCUISTON'S
MEMORANDUM IN SUPPORT OF MOTION TO FILE UNDER SEAL**

Defendants Mathews County School Board, Nancy Welch, Laurel Byrd, and Denise McCuiston, by counsel, pursuant to Local Civil Rule 5 and Federal Rule of Civil Procedure 5.2, files this Memorandum in Support of their Motion to Seal and states as follows:

1. Documents may be sealed "if competing interests outweigh the public's common law right of access." In re Policy Mgmt. Sys. Corp., 67 F.3d 296 (4th Cir. 1995).
2. The Plaintiffs' claims in this action all relate to a threat assessment that was conducted regarding Plaintiff H.C., pursuant to Va. Code § 22.1-794.
3. The Threat Assessment Report, which these Defendants seek to file under seal, contains personally identifiable information regarding H.C. and constitutes an education record of Plaintiff H.C. that is protected by federal and state confidentiality statutes, including the

Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g and Va. Code § 22.1-287.

4. In addition, the Report contains sensitive information regarding the actions of H.C., a minor, including information of a sexual nature.

5. Given the nature of the information contained in the Report, out of an abundance of caution, Defendants Mathews County School Board, Nancy Welch, Laurel Byrd, and Denise McCuiston seek permanent sealing of the Report due to the confidential and sensitive nature of the information included therein.

6. No public interest will be served by allowing access to this information, and so H.C.’s privacy interests, recognized by FERPA, outweigh the public’s right of access to the Threat Assessment. See Rosenfeld v. Montgomery Cty. Pub. Sch., 25 F. App’x 123, 132 (4th Cir. 2001) (noting that “the district court should consider FERPA in making its determination whether sealing of the documents in question is appropriate”).

7. No other procedure will suffice to protect H.C.’s privacy interests in the information contained in the Threat Assessment because the mere disclosure of the information vitiates the privacy interest given the nature of the information.

8. The moving parties have satisfied the public notice requirements by filing a Notice of Motion to File Under Seal contemporaneously herewith, in accordance with Local Civil Rule 5. Cf. id. at 132–33.

WHEREFORE, Defendants Mathews County School Board, Nancy Welch, Laurel Byrd, and Denise McCuiston respectfully requests that this Court grant their Motion to Seal.

Respectfully submitted,

MATHEWS COUNTY SCHOOL BOARD,
NANCY WELCH, LAUREL BYRD, AND
DENISE MCCUISTON

By Counsel

/s/ Andrew P. Selman

Stacy L. Haney, Esq. (VSB 71054)
Andrew P. Selman, Esq. (VSB 91060)
HANEY PHINYOWATTANACHIP PLLC
11 S. 12th Street, Suite 300C
Richmond, VA 23219
Tel: (804) 500-0301
Fax: (804) 500-0309
shaney@haneyphinyo.com
aselman@haneyphinyo.com

Counsel for Mathews County School Board,
Nancy Welch, Laurel Byrd, and Denise
McCuiston

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2020, I have electronically filed the foregoing using the CM/ECF system, which will automatically send email notification of such filing to counsel of record as follows:

Nicholas F. Simopoulos, Esq. (VSB No. 68664)
Simopoulos Law, PLLC
11 South 12th Street
Richmond, VA 23219
Tel: 804-220-5755
nicholas@simopouloslaw.com

William W. Tunner, Esq.
ThompsonMcMullan P.C.
100 Shockoe Slip, Third Floor
Richmond, VA 23219-4140
Tel: 804-649-7545
Fax: 804-780-1813
wtunner@t-mlaw.com

Jeremy D. Capps (VSB No. 43909)
Melissa Y. York (VSB No. 77493)
Harman, Claytor, Corrigan & Wellman
P.O. Box 70280 Richmond, Virginia 23255
Tel: 804-747-5200
Fax: 804-747-6085
jcapps@hccw.com
myork@hccw.com

/s/ Andrew P. Selman

Stacy L. Haney, Esq. (VSB 71054)
Andrew P. Selman, Esq. (VSB 91060)
HANEY PHINYOWATTANACHIP PLLC
11 S. 12th Street, Suite 300C
Richmond, VA 23219
Tel: (804) 500-0301
Fax: (804) 500-0309
shaney@haneyphinyo.com
aselman@haneyphinyo.com

Counsel for Mathews County School Board,
Nancy Welch, Laurel Byrd, and Denise
McCuiston